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***Pro Hac Vice Motion To Be Filed***

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

**LOLOSEA TUITASI**, individually and  
on behalf of all others similarly situated,

Plaintiff

-against-

**MIDLAND CREDIT**  
**MANAGEMENT, INC.,**

Defendant

Civil Case No.:

**CIVIL ACTION**

**CLASS ACTION COMPLAINT**  
**and**  
**JURY TRIAL DEMAND**

1  
2 Plaintiff LOLOSEA TUITASI (hereinafter, “Plaintiff”), a California  
3 resident, brings this class action complaint by and through the undersigned  
4 attorneys, against Defendant MIDLAND CREDIT MANAGEMENT, INC.  
5 (hereinafter “Defendant” or “MCM”), for its violations of the Fair Debt Collection  
6 Practices Act 15 U.S.C. §1692 (hereinafter “FDCPA”), and the Rosenthal Fair Debt  
7 Collection Practices Act, California Civil Code §§ 1788 et seq. (hereinafter  
8 “RFDCPA”), individually and on behalf of a class of all others similarly situated,  
9 pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon  
10 information and belief of Plaintiff’s counsel, except for allegations specifically  
11 pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.  
12

### 13 **INTRODUCTION/PRELIMINARY STATEMENT**

- 14
- 15 1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence  
16 of the use of abusive, deceptive, and unfair debt collection practices by many  
17 debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned  
18 that “abusive debt collection practices contribute to the number of personal  
19 bankruptcies, to material instability, to the loss of jobs, and to invasions of  
20 individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re  
21 inadequate to protect consumers,” and that “the effective collection of debts”  
22 does not require “misrepresentation or other abusive debt collection  
23 practices.” 15 U.S.C. §§ 1692(b) & (c).  
24
  - 25 2. Congress explained that the purpose of the Act was not only to eliminate  
26 abusive debt collection practices, but also to “insure that those debt  
27 collectors who refrain from using abusive debt collection practices are not  
28

competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

3. One of the purposes of the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 is to similarly prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts.

### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. The Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

### **NATURE OF THE ACTION**

6. Plaintiff brings this class action on behalf of a class of California consumers seeking redress for Defendant’s actions of using false, deceptive and misleading representation or means in connection with the collection of an alleged debt.
7. Defendant’s actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”), which prohibits debt collectors from engaging in false,

1 deceptive or misleading practices.

2 8. Defendant's actions violated California Civil Code § 1788 et seq. of the  
3 Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), which prohibits  
4 debt collectors from engaging in unfair or deceptive acts or practices in the  
5 collection of consumer debts.

6 9. Plaintiff is seeking damages, and declaratory and injunctive relief.

7 **PARTIES**

8 10. Plaintiff is a natural person and a resident of the state of California and is a  
9 "Consumer" as defined by 15 U.S.C. §1692(a)(3).

10 11. Defendant MCM is a collection agency located at 2365 Northside Drive,  
11 Suite 300, San Diego, California 92108.

12 12. Upon information and belief, Defendant is a company that uses the mail,  
13 telephone, or facsimile in a business the principal purpose of which is the  
14 collection of debts, or that regularly collects or attempts to collect debts  
15 alleged to be due another.

16 13. Defendant is a "debt collector," as defined under the FDCPA under 15  
17 U.S.C. § 1692a(6).

18 **ALLEGATIONS OF FACT**

19  
20  
21 14. Plaintiff repeats, reiterates and incorporates the allegations contained in  
22 paragraphs above herein with the same force and effect as if the same were  
23 set forth at length herein.

24 15. Some time prior to September 12, 2018, an obligation was allegedly incurred  
25 to MIDLAND FUNDING, LLC.

26 16. The MIDLAND FUNDING, LLC obligation arose out of a transaction for  
27 medical services, a transaction in which money, property, insurance or  
28 services, which are the subject of the transaction, are primarily for personal,

1 family or household purposes.

2 17.The alleged MIDLAND FUNDING, LLC obligation is a "debt" as defined  
3 by 15 U.S.C.§ 1692a(5).

4 18.MIDLAND FUNDING, LLC is a "creditor" as defined by 15 U.S.C.§  
5 1692a(4).

6 19.Defendant contends that the MIDLAND FUNDING, LLC debt is past due.

7 20.Defendant is a company that uses mail, telephone or facsimile in a business  
8 the principal purpose of which is the collection of debts, or that regularly  
9 collects or attempts to collect debts incurred or alleged to have been incurred  
10 for personal, family or household purposes on behalf of creditors.

11 21.MIDLAND FUNDING, LLC directly or through an intermediary contracted  
12 the Defendant to collect the alleged debt.

13 22.On or about September 12, 2018, the Defendant caused to be delivered to the  
14 Plaintiff a collection letter in an attempt to collect the alleged MIDLAND  
15 FUNDING, LLC debt. *See Exhibit A.*

16 23.The September 12, 2018 letter was sent or caused to be sent by persons  
17 employed by Defendant as a “debt collector” as defined by 15 U.S.C.  
18 §1692a(6).

19 24.The September 12, 2018 letter is a “communication” as defined by 15 U.S.C.  
20 §1692a(2).

21 25.The Plaintiff received and read the Letter sometime after September 12,  
22 2018.

23 26.The Letter stated in part:

24  
25 **Current Balance: \$4,486.73**

26 27.The Letter further stated:

27  
28 “We can’t change the past, but we can help with your future.”

1 28.The Letter further threatens to continue reporting said debt to credit  
2 reporting agencies if payment is not made.

3 29.Said statement is false, deceptive and misleading as it could lead to multiple  
4 interpretations, some of which are incorrect, and it implies false promises of  
5 financial benefit to consumer if payment is made.

6 30.There are two possible interpretations of this statement: (1) reporting the  
7 payment to the credit reporting agencies will improve the Plaintiff's credit  
8 score or credit worthiness; or (2) reporting payment to the original creditor  
9 will help the debtor in future financial decisions.

10 31.The first interpretation being false, as paying off delinquent debts does not  
11 improve a consumer's credit score, and in many cases might actually harm  
12 it.

13 32.“It is not ‘bizarre or idiosyncratic’ for the least sophisticated debtor to read  
14 the language [Plaintiff] identifies to mean that payment would not hurt a  
15 debtor's credit score and might even actually improve it.” See *Knight v.*  
16 *Midland Credit Management*, Case No. 17-3786 (3<sup>rd</sup> Circuit Nov. 8, 2018).  
17 “Moreover, a debtor who falsely believes that making payment on her debt  
18 would not hurt her credit score and might improve it could be induced to  
19 make the payment. Therefore, this language could be found to be material.”  
20 *Id.*

21 33.The FDCPA expressly prohibits debt collectors from making any false,  
22 deceptive, or misleading representations in connection with the collection of  
23 a debt. See 15 U.S.C. §1692e.

24 34.Defendant's conduct harmed the Plaintiff.  
25  
26

27 **CLASS ALLEGATIONS**  
28

- 1 35. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure  
2 (hereinafter “FRCP”) Rule 23, individually and on behalf of the following  
3 consumer class (the “Class”) consisting of: a) All consumers who have an  
4 address in the state of California b) who were sent a collection letter from  
5 the Defendant c) attempting to collect a consumer debt owed to Midland  
6 Funding, LLC d) which states “we can’t change the past, but we can help  
7 with your future”” e) on a debt in which the law did not prohibit the reporting  
8 of payments or non-payments to a credit bureau f) which letter was sent on  
9 or after a date one year prior to the filing of this action and on or before a  
10 date 21 days after the filing of this action.
- 11 36. The identities of all class members are readily ascertainable from the records  
12 of Defendant and those companies and entities on whose behalf they attempt  
13 to collect and/or have purchased debts.
- 14 37. Excluded from the Plaintiff Class are the Defendant and all officers,  
15 members, partners, managers, directors, and employees of the Defendant and  
16 their respective immediate families, and legal counsel for all parties to this  
17 action and all members of their immediate families.
- 18 38. There are questions of law and fact common to the Plaintiff Class, which  
19 common issues predominate over any issues involving only individual class  
20 members. The principal issue is whether the Defendants’ written  
21 communications to consumers, in the forms attached as *Exhibit A*, violate  
22 15 U.S.C. § 1692e.
- 23 39. The Plaintiff’s claims are typical of the class members, as all are based upon  
24 the same facts and legal theories.
- 25 40. The Plaintiff will fairly and adequately protect the interests of the Plaintiff  
26 Class defined in this complaint. The Plaintiff has retained counsel with  
27 experience in handling consumer lawsuits, complex legal issues, and class  
28

1 actions, and neither the Plaintiff nor Plaintiff's attorneys have any interests,  
2 which might cause them not to vigorously pursue this action.

3 41. This action has been brought, and may properly be maintained, as a class  
4 action pursuant to the provisions of Rule 23 of the Federal Rules of Civil  
5 Procedure because there is a well-defined community interest in the  
6 litigation:

- 7 (a) **Numerosity:** The Plaintiff is informed and believes, and on that basis  
8 alleges, that the Plaintiff Class defined above is so numerous that  
9 joinder of all members would be impractical.
- 10 (b) **Common Questions Predominate:** Common questions of law and  
11 fact exist as to all members of the Plaintiff Class and those questions  
12 predominate over any questions or issues involving only individual  
13 class members. The principal issue is whether the Defendant's written  
14 communications to consumers, in the forms attached as *Exhibit A*,  
15 violate 15 U.S.C. § 1692e.
- 16 (c) **Typicality:** The Plaintiff's claims are typical of the claims of the class  
17 members. The Plaintiff and all members of the Plaintiff Class have  
18 claims arising out of the Defendant's common uniform course of  
19 conduct complained of herein.
- 20 (d) **Adequacy:** The Plaintiff will fairly and adequately protect the  
21 interests of the class members insofar as Plaintiff has no interests that  
22 are averse to the absent class members. The Plaintiff is committed to  
23 vigorously litigating this matter. Plaintiff has also retained counsel  
24 experienced in handling consumer lawsuits, complex legal issues, and  
25 class actions. Neither the Plaintiff nor Plaintiff's counsel has any  
26 interests which might cause them not to vigorously pursue the instant  
27 class action lawsuit.  
28



(e) **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

42. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

43. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

### **FIRST CAUSE OF ACTION**

#### **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

##### **15 U.S.C. §1692e *et seq.***

44. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

45. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

46. Pursuant to 15 U.S.C. § 1692e, a debt collector may not use any false, misleading and/or deceptive means to collect or attempt to collect any

1 debt or to obtain information concerning a consumer.

2 47.The Defendant violated said section in its letter to the Plaintiff by:

- 3 a. Using a false, deceptive, and misleading representations or means  
4 in connection with the collection of a debt;  
5 b. Falsely representing the character and legal status of the alleged debt  
6 in violation of 1692e(2);  
7 c. Making a false representation or using deceptive means to collect  
8 a debt in violation of 1692e(10).

9 48. By reason thereof, Defendant is liable to Plaintiff for judgment that  
10 Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual  
11 damages, statutory damages, costs and attorneys' fees.  
12

13  
14 **SECOND CAUSE OF ACTION**

15 **(Violations Of The Rosenthal Fair Debt Collection Practices Act)**

16 49.Plaintiff repeats, reiterates and incorporates the allegations contained in  
17 paragraphs above herein with the same force and effect as if the same were  
18 set forth at length herein.

19 50.Cal. Civ. Code §1788.17 mandates that every person or entity collecting or  
20 attempting to collect a consumer debt shall comply with the provisions of  
21 Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies  
22 in Section 1692k of, Title 15 of the United States Code statutory regulations  
23 contained within the FDCPA, 15 U.S.C. § 1692 *et seq.*

24 51.As set forth above, Defendant violated 15 U.S.C. § 1692e(2) and 15 U.S.C.  
25 § 1692e(10) by misrepresenting the amount of Plaintiff's debt and using a  
26 deceptive and misleading means and misrepresentations to collect a debt.

27 52.As such, Defendant violated the foregoing provisions of the FDCPA and  
28

1 RFDCPA.

2 53.As a direct and proximate result of Defendant's violations of the RFDCPA  
3 and FDCPA, Plaintiff was harmed, and may recover from Defendant one  
4 thousand dollars (\$1,000.00) in statutory damages in addition to actual  
5 damages and reasonable attorneys' fees and costs pursuant to Cal. Civ. Code  
6 § 1788.30.  
7

8 **DEMAND FOR TRIAL BY JURY**  
9

10  
11 54.Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff  
12 hereby request a trial by jury on all issues so triable.  
13

14 **PRAYER FOR RELIEF**  
15

16 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

- 17 (a) Declaring that this action is properly maintainable as a Class  
18 Action and certifying Plaintiff as Class representative and the undersigned as  
19 Class Counsel;  
20 (b) Awarding Plaintiff and the Class statutory damages;  
21 (c) Awarding Plaintiff and the Class actual damages;  
22 (d) Awarding Plaintiff costs of this Action, including reasonable  
23 attorneys' fees and expenses;  
24 (e) Awarding pre-judgment interest and post-judgment interest;  
25 and  
26 (f) Awarding Plaintiff and the Class such other and further relief  
27 as this Court may deem just and proper.  
28

1  
2 Dated: May 17, 2019  
3

4 /s/ Jonathan A. Stieglitz  
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